

by plan administrators after initiating distress terminations of single-employer plans that are not expected to be sufficient for guaranteed benefits. Subpart E sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of ERISA from participants and beneficiaries in PBGC-trusted plans, and provides for reimbursement of benefit underpayments. (The provisions of this part have not been amended to take account of changes made in section 4022 of ERISA by sections 766 and 777 of the Retirement Protection Act of 1994.)

[61 FR 34028, July 1, 1996, as amended at 62 FR 67728, Dec. 30, 1997]

**§ 4022.2 Definitions.**

The following terms are defined in § 4001.2 of this chapter: annuity, bankruptcy filing date, Code, employer, ERISA, guaranteed benefit, mandatory employee contributions, nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, PPA 2006 bankruptcy termination, proposed termination date, statutory hybrid plan, substantial owner, and title IV benefit.

In addition, for purposes of this part (unless otherwise required by the context):

*Accumulated mandatory employee contributions* means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of ERISA.

*Benefit in pay status* means that one or more benefit payments have been made or would have been made except for administrative delay.

*Benefit increase* means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules,

reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments. In the case of a plan under which the amount of benefits depends on the participant's salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase. Similarly, in the case of a plan under which the amount of benefits depends on the participant's age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase.

*Covered employment* means employment with respect to which benefits accrue under a plan.

*Pension benefit* means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently left covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen's compensation benefits provide a substantially level income to the recipient.

*Straight life annuity* means a series of level periodic payments payable for the life of the recipient, but does not include any combined annuity form, including an annuity payable for a term certain and life.

[61 FR 34028, July 1, 1996, as amended at 74 FR 59096, Nov. 17, 2009; 76 FR 34601, June 14, 2011]

**§ 4022.3 Guaranteed benefits.**

(a) *General.* Except as otherwise provided in this part, the PBGC will guarantee the amount, as of the termination date, of a benefit provided under a plan to the extent that the benefit does not exceed the limitations in ERISA and in subpart B, if—

(1) The benefit is, on the termination date, a nonforfeitable benefit;

(2) The benefit qualifies as a pension benefit as defined in § 4022.2; and

(3) The participant is entitled to the benefit under § 4022.4.

(b) *PPA 2006 bankruptcy termination.* (1) *Substitution of bankruptcy filing date.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in paragraph (a) of this section.

(2) *Condition for entitlement satisfied between bankruptcy filing date and termination date.* If a participant becomes entitled to a subsidized early retirement or other benefit before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) but on or after the bankruptcy filing date (or after the bankruptcy filing date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die), the subsidy or other benefit is not guaranteed because the participant had not satisfied the conditions for entitlement by the bankruptcy filing date. In such a case, the participant may have been put into pay status with the subsidized early retirement or other benefit by the plan administrator, because the plan was ongoing at the time. Even though the subsidy or other benefit is not guaranteed, the participant may be entitled to another benefit from PBGC (at that time or in the future). If so, PBGC will continue paying the participant a benefit, but in an amount reduced to reflect that the subsidy or other benefit is not guaranteed. PBGC will also allow a similarly situated participant who had not started receiving a subsidized early retirement or other benefit before PBGC became trustee of the plan to begin receiving a benefit (if the participant would have been allowed under the plan to begin receiving benefits and has reached his Earliest PBGC Retirement Date, as defined in §4022.10), but in an amount that does not include the subsidy or other benefit.

(3) *Examples.* (i) *Vesting.* A plan provides for 5-year “cliff” vesting—i.e., benefits become 100% vested when the participant completes five years of service; before the five-year mark, benefits are 0% vested. The contributing sponsor of the plan files a bankruptcy

petition on November 15, 2006. The plan terminates with a termination date of December 4, 2007, and PBGC becomes statutory trustee of the plan. A participant had four years and six months of service at the bankruptcy filing date and became vested in May 2007. None of the participant’s benefit is guaranteed because none of the benefit was non-forfeitable as of the bankruptcy filing date.

(ii) *Subsidized early retirement benefit.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section), but the plan also provides that a participant may retire from active employment at any age with a fully subsidized (i.e., not actuarially reduced) early retirement benefit if he has completed 30 years of service. The plan also provides that a participant who is age 60 and has completed 20 years of service may retire from active employment with an early retirement benefit, reduced by three percent for each year by which the participant’s age at benefit commencement is less than 65. A participant was age 61 and had 29 years and 6 months of service at the bankruptcy filing date. The participant continued working for another six months, then retired as of June 1, 2007, and immediately began receiving from the plan the fully subsidized “30-and-out” early retirement benefit. PBGC will continue paying the participant a benefit, but PBGC’s guarantee does not include the full subsidy for the “30-and-out” benefit, because the participant satisfied the conditions for that benefit after the bankruptcy filing date. The guarantee does include, however, the partial subsidy associated with the “60/20” early retirement benefit, because the participant satisfied the conditions for that benefit before the bankruptcy filing date.

(iii) *Accruals after bankruptcy filing date.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section). A participant has a vested, accrued benefit of \$500 per month as of the bankruptcy filing date. At the plan’s termination date, the participant has a vested, accrued benefit of \$512 per month. His guaranteed benefit is limited to \$500 per month—

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the accrued, nonforfeitable benefit as of the bankruptcy filing date.

[61 FR 34028, July 1, 1996; 61 FR 67943, Dec. 26, 1996; 76 FR 34601, June 14, 2011]

#### § 4022.4 Entitlement to a benefit.

(a) A participant or his surviving beneficiary is entitled to a benefit if under the provisions of a plan:

(1) The benefit was in pay status on the termination date of the plan.

(2) The benefit is payable in an optional life-annuity form of benefit that the participant or beneficiary elected on or before the termination date of the plan or, if later, the date on which PBGC became statutory trustee of the plan.

(3) Except for a benefit described in paragraph (a)(2) of this section, before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) the participant had satisfied the conditions of the plan necessary to establish the right to receive the benefit prior to such date (prior to or on such date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) other than application for the benefit, satisfaction of a waiting period described in the plan, or retirement; or

(4) Absent an election by the participant, the benefit would be payable upon retirement.

(5) In the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon death, the participant (or beneficiary) had satisfied the conditions of the plan necessary to establish the right to the benefit other than death or designation of a beneficiary.

(b) If none of the conditions set forth in paragraph (a) of this section is met, the PBGC will determine whether the participant is entitled to a benefit on the basis of the provisions of the plan and the circumstances of the case.

(c) In a PPA 2006 bankruptcy termination, "bankruptcy filing date" is substituted for "termination date" each place that "termination date" appears in paragraphs (a)(1) and (3) of this section. In making this substitution

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for purposes of paragraph (a)(3) of this section, the rule in § 4022.3(b)(2) (dealing with the situation where the condition for entitlement was satisfied between the bankruptcy filing date and the termination date) shall apply.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16954, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

#### § 4022.5 Determination of nonforfeitable benefits.

(a) A guaranteed benefit payable to a surviving beneficiary is not considered to be forfeitable solely because the plan provides that the benefit will cease upon the remarriage of such beneficiary or his attaining a specified age. However, the PBGC will observe the provisions of the plan relating to the effect of such remarriage or attainment of such specified age on the surviving beneficiary's eligibility to continue to receive benefit payments.

(b) Any other provision in a plan that the right to a benefit in pay status will cease or be suspended upon the occurrence of any specified condition does not automatically make that benefit forfeitable. In each such case the PBGC will determine whether the benefit is forfeitable.

(c) A benefit guaranteed under § 4022.6 shall not be considered forfeitable solely because the plan provides that upon recovery of the participant the benefit will cease.

#### § 4022.6 Annuity payable for total disability.

(a) Except as otherwise provided in this section, an annuity which is payable (or would be payable after a waiting period described in the plan, whether or not the participant is in receipt of other benefits during such waiting period), under the terms of a plan on account of the total and permanent disability of a participant which is expected to last for the life of the participant and which began on or before the termination date is considered to be a pension benefit.

(b) In any case in which the PBGC determines that the standards for determining such total and permanent disability under a plan were unreasonable, or were modified in anticipation of termination of the plan, the disability